

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

XYBEC SOLUTIONS, INC., a British  
Columbia corporation,

Plaintiff,

v.

MOBILE WORKFORCE, INC., a  
Washington corporation; MOBILE WORK-  
FORCE, INC., a Delaware corporation and  
DAVID WEIR, a Washington resident,

Defendants

Case No. CV-05-5726RBL

ORDER DENYING DEFENDANTS'  
MOTION TO VACATE DEFAULT  
JUDGMENT


This matter is before the court on Defendants' Motion to Vacate the Default Judgment entered by this court on March 15, 2006. [See Judgment at Dkt. #12] Defendants argue that defendant David Weir, president of the Mobile workforce defendants, did not realize the necessity of responding to the lawsuit and that his failure amounts to excusable neglect under Fed. R. Civ. P. 60. Defendants also claim to have a defense on the merits to the Plaintiffs' claims.

Plaintiff argues that Defendants are experienced litigators and that they have not shown that their failure to respond was excusable, the result of a mistake, or inadvertent. They also claim that they will be prejudiced if the judgment is vacated now, as evidence has been lost and more importantly because other creditors have filed claims. Plaintiff argues that it will lose priority if the judgment is vacated.

1 The court agrees that the Defendants have not made the requisite showing under Fed. R. Civ. P. 60.  
2 Plaintiffs actively sought to pursue their claims, and for what appears to be a tactical mistake, Defendants  
3 ignored the lawsuit and subsequent discovery attempts. The defendants failure to respond is culpable, and the  
4 Plaintiff would be prejudiced if the judgment were set aside. *See Franchise Holding II LLC v. Huntington*  
5 *Restaurants Group, Inc.*, 375 F.3d 922, 926 (9<sup>th</sup> Cir. 2004).

6 The Defendants have not met their burden under Rule 60 and their Motion to Vacate the Judgment  
7 [Dkt. #15] is DENIED.

8 DATED this 21<sup>st</sup> day of November, 2006.

9  
10  
11   
12 RONALD B. LEIGHTON  
13 UNITED STATES DISTRICT JUDGE  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28